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RECEIVED  
LABOR DIVISION  
JUL 27 2003

Attorneys for Director of Labor  
and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of	) CASE NO. OSH 2002-23
DIRECTOR, DEPARTMENT OF LABOR	) (Inspection No. 304218092)
AND INDUSTRIAL RELATIONS,	)
	)
Complainant,	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBIT A; APPROVAL
vs.	) AND ORDER
	)
KIEWIT PACIFIC COMPANY,	)
	)
Respondent.	)
	)

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations  
("Director") and Respondent KIEWIT PACIFIC COMPANY  
("Respondent") having reached a full and complete settlement of  
the above-captioned contested case presently pending before the  
Hawaii Labor Relations Board ("Board") stipulate and agree as  
follows:

On or about March 8, 2002, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at Hangar 87, Ford Island, Honolulu, Hawaii, 96818.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on May 3, 2002 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$875.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at Hangar 87, Ford Island, Honolulu, Hawaii, 96818.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the

requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Director withdraws the Citation and Notification of Penalty dated May 3, 2002.

5. The Respondent withdraws its notice of contest dated May 16, 2002.

6. The Respondent shall remit to the Director the amount of \$875.00 which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

7. Respondent recognizes its independent obligation to protect its employees under the Hawaii Occupational Safety and Health laws and applicable Hawaii Administrative Rules, which include its duty to evaluate the workplace for actual and potential hazards and to eliminate or reduce exposures in compliance with the specific Hawaii Administrative Rule. Respondent acknowledges this responsibility without regard to the separate obligation of the owner/developer, federal government, or other contractors, to protect their own or the Respondent's employees or comply with other laws and regulations. Some of the actions that may be required under the HIOSH law and related administrative rules include the duty to measure, monitor, and record employee exposure to toxic materials and harmful physical agents.

8. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.


9. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

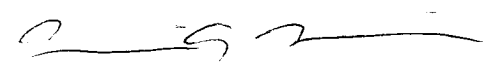
10. The Hawaii Labor Relations Board may enter an order in accordance with the foregoing stipulations.

DATED: Honolulu, Hawaii, OCT 27 2003.

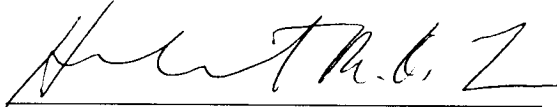
APPROVED AS TO FORM:

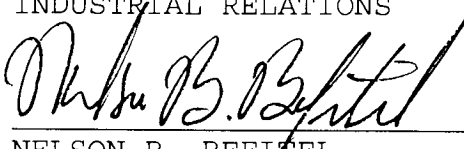
KIEWIT PACIFIC COMPANY

  
\_\_\_\_\_  
BRIAN G.S. CHOY  
Attorney for Respondent

BRIAN MIDYETT  
  
\_\_\_\_\_  
By:  
It's: OPERATIONS MNG.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
HERBERT B.K. LAU  
Deputy Attorney General

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS  
  
\_\_\_\_\_  
NELSON B. BEFITELE  
Director of Labor

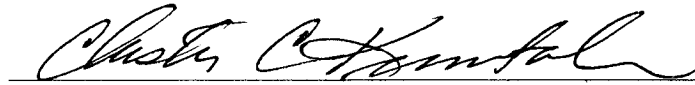
APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 71

DATED: October 27, 2003



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 423  
HONOLULU, HI 96813  
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7000 1670 0006 4273 0005

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## Citation and Notification of Penalty

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**To:**

Kiewit Pacific Co  
and its successors  
1001 Kamokila Blvd #305  
Kapolei, HI 96707

Inspection Number: 304218092  
Inspection Date(s): 03/08/2002- 03/19/2002  
Issuance Date: 05/03/2002  
OSHSO ID: Y6207  
Optional Report No.: 1302

**Inspection Site:**

Hangar 87 Ford Island  
Honolulu, HI 96818

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Department of Labor and Industrial Relations Appeals Board or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 20 calendar days after receipt, the proposed citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the Appeals Board.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been

discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.



## ABATEMENT CERTIFICATION

FOR JENNIFER SHISHIDO, ADMINISTRATOR  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
830 PUNCHBOWL STREET  
HONOLULU, HI 96813

Kiewit Pacific Co  
1001 Kamokila Blvd #305  
Kapolei, HI 96707

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 05/03/2002. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 304218092

**Inspection Dates:** 03/08/2002 - 03/19/2002

**Issuance Date:** 05/03/2002



830 Punchbowl Street, Room 423  
Honolulu, HI 96813

**Citation and Notification of Penalty**

**Company Name:** Kiewit Pacific Co

**Inspection Site:** Hangar 87 Ford Island, Honolulu, HI 96818

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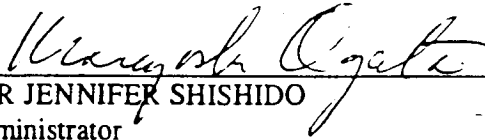
**Citation 1 Item 1** Type of Violation: **Serious**

29 CFR 1910.1018(e)(2) [Refer to chapter 12-202-31.1, HAR] Initial monitoring was not performed for each workplace or work operation covered by this section to accurately determine the airborne concentration of inorganic arsenic to which employees may be exposed; i.e., when arsenic was found in the workplace, initial monitoring was not performed to determine employee exposure.

Location: Hangar 87 cold/electrical room

Date By Which Violation Must be Abated:  
Proposed Penalty:

Worksite Changed  
\$ 875.00

  
\_\_\_\_\_  
FOR JENNIFER SHISHIDO  
Administrator

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 423  
HONOLULU, HI 96813

**SUMMARY OF PROPOSED PENALTIES**

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**Company Name:** Kiewit Pacific Co  
**Inspection Site:** Hangar 87 Ford Island, Honolulu, HI 96818  
**Issuance Date:** 05/03/2002

**Summary of Penalties for Inspection Number 304218092**

Citation 1, Serious	= \$	875.00
<b>TOTAL PROPOSED PENALTIES</b>	<b>= \$</b>	<b>875.00</b>

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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$7.50 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.